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Accommodating The Commute

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Stop Light

Most employers are aware of their duty to engage in the interactive process in order to explore accommodations that will allow an employee to perform the essential functions of their position. But what if the employee's requested accommodation relates solely to their commute to work? Does the Americans with Disabilities Act (ADA) require that an employer remove barriers that exist outside the workplace?

In *Regan v. Faurecia Automotive Seating, Inc.*, 679 F.3d 475 (6th Cir. May 10, 2012), the plaintiff suffered from narcolepsy. While working for defendant, plaintiff testified that her commute to work took between two and four hours. In 2008, defendant determined that plaintiff's work schedule – 6:00 a.m. to 3:00 p.m. – was not productive. As a result, defendant changed her work schedule to 7:00 a.m. to 4:00 p.m.

Plaintiff informed defendant that her narcolepsy would make it difficult to work the new hours because she would be commuting in heavier traffic (in her deposition she testified she gets tired quickly in heavy traffic). Consequently, plaintiff requested she be permitted to continue working from 6:00 a.m. to 3:00 p.m. or to work from 7:00 a.m. to 3:00 p.m. without a lunch break. Defendant informed plaintiff she could either take leave under the FMLA or quit. Plaintiff subsequently resigned her employment and filed a lawsuit alleging, among other things, violations of the ADA. Agreeing with the district court, the Sixth Circuit held that plaintiff's proposal of a modified work schedule for purposes of commuting during hours with allegedly lighter traffic was not a reasonable accommodation.

Contrast this decision with *Colwell v. Rite Aid Corp.*, 602 F. 3d 495 (3d Cir. 2010). In Colwell, plaintiff was hired as a cashier at Rite Aid. She worked varying shifts, some 9 a.m. to 2 p.m., others 5 p.m. to 9 p.m. During her employment, plaintiff developed a medical condition and eventually became blind in one eye. Plaintiff subsequently informed her supervisors that her blindness made it difficult to drive at night. It was undisputed that public transportation or taxi service was not available for her. Plaintiff also claimed that relying upon family to assist with her commute was unduly burdensome. Nonetheless, defendant told plaintiff that it would not assign her to day shifts because “it wouldn't be fair” to other employees. Plaintiff eventually quit and sued defendant for, among other things, constructive discharge and violations of the ADA.

According to the district court, defendant had “no duty to accommodate [plaintiff’] in her commute to work.” The Third Circuit disagreed: “We hold as a matter of law that changing plaintiff's working schedule to day shifts in order to alleviate her disability related difficulties in getting to work is a type of accommodation that the ADA contemplates.” The Court also observed that defendant neither made an argument regarding the reasonableness of plaintiff's request for a schedule change, nor argued that scheduling plaintiff for day shifts would constitute an undue burden. Thus, those questions

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ultimately were for the jury to decide.

The takeaway? It is always prudent to play it safe and engage in the interactive process with employees to discuss proposed accommodations. Once a proposed accommodation is identified, an employer can work with outside counsel to discuss whether the request would be deemed "reasonable" under the ADA.